IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 4.4.2005

Coram

THE HONOURABLE MR. MARKANDEY KATJU, THE CHIEF JUSTICE

and

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

Writ Appeal No.3235 of 2004

1. The Tamil Nadu Electricity Board
   rep. by its Secretary,
   Anna Salai, Chennai.

2. The Chairman,
   Tamil Nadu Electricity Board,
   Chennai. .. Appellants

versus

G. Sethuraman .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in Writ Petition No.17827 of 2000 dated 20.4.2004.

for appellants : Mr. V.Radhakrishnan

for respondent : Ms. K. Suguna

JUDGMENT

(Judgment of the Court was delivered by
The Honourable The Chief Justice)

This writ appeal has been filed against the impugned order of the learned single Judge dated 20.4.2004 passed in Writ Petition No.17827 of 2000.

2. Heard the learned counsel for the parties. We have also perused the record.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The writ petitioner (respondent in this appeal) was promoted by order dated 7.6.1996 from the post of Assistant Executive Engineer to the post of Executive Engineer retrospectively with effect from 9.6.1988. He was further promoted as Superintending Engineer in 1998.

4. The short question in this writ appeal is whether the writ petitioner was eligible for promotion to the post of Chief Engineer on 30.6.2000 when the panel for promotion to the post of Chief Engineer was drawn.

5. The proviso to Regulation 98(1)(b)(ii) of the Tamil Nadu Electricity Board Service Regulations as amended on 30.6.2000 states:

> " Provided that only those Superintending Engineers, who have put in not less than 8 (Eight) years of service in Class I Service shall be eligible for being considered for the post of Chief Engineer by promotion."

6. Mr. V. Radhakrishnan, learned counsel for the appellant Board submitted that the writ petitioner was not qualified as he had put in only four years of service in Class I Service on the relevant date, while, Ms. K.Suguna, learned counsel for the writ petitioner, submitted that the writ petitioner had put in more than eight years of service if we take his promotion as Executive Engineer from 1988. It is not disputed that an Executive Engineer is in Class I Service.

7. Mr. V. Radhakrishnan, learned counsel for the appellant Board has invited our attention to paragraph 3 of the proceedings of the Tamil Nadu Electricity Board dated 30.6.2000 which states as follows:

> " Tamil Nadu Electricity Board, after careful consideration, directs that a Superintending Engineer of the Board is eligible to be considered for promotion to the post of Chief Engineer, provided he has put in an actual service of not less than eight years in Class I Service."

Paragraph 5 of the said proceedings states that amendments to the Tamil Nadu Electricity Board Service Regulations will be issued separately.

8. It may be noticed that while the above proceedings uses the word "actual" before the words "service of not less than eight years in Class I Service", the relevant regulation, being the proviso to Regulation 98(1)(b)(ii), does not use the word "actual". In our opinion, the Regulation will prevail over the proceedings as the Regulation is a piece of delegated legislation whereas a mere proceeding is not.

9. The writ petitioner was no doubt promoted as Executive Engineer by order dated 7.6.1996 but that order itself states that the promotion is retrospective from 9.6.1988. Thus, this promotion though granted by an

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

order in the year 1996, is retrospective from the year 1988. Thus, the aforesaid order dated 7.6.1996 creates a legal fiction.

10. It is well settled in law that there are legal fictions under which the Court has to assume something to exist which does not really exist. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances, vide Gagraj Singh v. S.T.A.T, (1997) 1 SCC 650, K.Kamraj Nadar v. Kunju Thevar, AIR 1958 SC 687, etc.

11. For instance, in Section 43(3) of the Income Tax Act, 1961 the word "plant" has been defined to include a "book". Normally, a plant means a "factory". One would normally never call a "book" as a "factory". However, for the purpose of the Income Tax Act, the word "plant" includes a "book" for the purpose of depreciation.

12. As regards a legal fiction, it is well settled that full effect must be given to it and it should be carried to its logical conclusion, vide State of Bombay v. Pandurang Vinayak, AIR 1953 SC 244 (246), American Home Products Corporation v. Mac. Laboratories, AIR 1986 SC 137, Union of India v. Jalyan Udyog, AIR 1994 SC 88, P.E.K.Kalliani Amma v. K.Devi, AIR 1996 SC 1963 (1976), etc.

13. In an oft quoted passage in East End Dwelling Co. Ltd v. Finsbury Borough Council, (1951) 2 All.E.R 587, Lord Asquith observed : -

> " If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs"

The above observation has been quoted with approval by the Supreme Court in several decisions e.g. Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd., AIR 2003 SC 511 (para-33), C.W.T v. Trustees of H.E.H. , (2003) 5 SCC 122 (para-20), Dipak Chandra Ruhidas v. Chandan Kumar Sarkar, (2003) 7 SCC 66 (para-12), etc.

14. In the present case, the legal fiction which has been created by order dated 7.6.1996 is that the writ petitioner is deemed to have been retrospectively promoted as Executive Engineer from 9.6.1988. Hence full effect must be given to this legal fiction, and for all purposes we have to treat it as if the writ petitioner had in fact been promoted as Class I officer from 9.6.1988, and our eyes should not boggle half way. For these reasons, we fully agree with the view taken by the learned single Judge in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the impugned judgment.

15. In view of the above, there is no force in the writ appeal and it is dismissed. No costs. W.A.M.P.Nos.6218 of 2004 and 1075 of 2005 are dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Vu/pv

To
1. The Secretary,
Tamil Nadu Electricity Board
Anna Salai, Chennai.

2. The Chairman,
Tamil Nadu Electricity Board,
Chennai.

+ 1 CC to Mr.V.Radhakrishnan, Advocate SR NO 15876

W.A.No.3235 of 2004
4.4.2005

smk(co)
gp/11.4.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/